

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 4:20CR212
)
DEBRA LYN MERCER-ERWIN,)
)
Defendant.)

**UNOPPOSED MOTION TO CONTINUE THE
SENTENCING HEARING SCHEDULED FOR OCTOBER 7, 2024 AND THE
CORRESPONDING DEADLINE TO FILE A SENTENCING MEMORANDUM**

Defendant Debra Mercer-Erwin (“Mrs. Erwin”), pursuant to LCrR-47, respectfully submits this Motion to Continue the Sentencing Hearing Scheduled for October 7, 2024 and the Corresponding Deadline to File a Sentencing Memorandum. In support of this Motion, Mrs. Erwin states as follows:

1. Mrs. Erwin’s was convicted following a jury trial on May 3, 2023. See (Doc. 453).
2. Mrs. Erwin’s Initial Presentencing Investigation Report (“PSR”) was completed on March 5, 2024. See (Doc. 507).
3. Mrs. Erwin’s Objections to the Initial PSR were submitted on May 20, 2024.
4. Mrs. Erwin’s Final PSR was completed on August 30, 2024. See (Doc. 515).
5. On September 18, 2024, the Court set this matter for a Sentencing Hearing on October 7, 2024, with a deadline to file a Sentencing Memorandum on September 30, 2024.

6. Undersigned counsel was hired by Mrs. Erwin to draft her PSR Objections as well as her Sentencing Memorandum.

7. The Objections to the PSR are extensive, and the legal issues related to the Objections are complicated.

8. Undersigned Counsel is scheduled to be in trial on October 8, 2024 in the Western District of Oklahoma in the case of United States v. Lin, 23-CR-192-G. The charges filed in the case consist of drug conspiracy and money laundering.

9. Additionally, up until September 13, 2024, undersigned counsel was preparing to be in trial in the Western District of Oklahoma in the case of United States v. Back, 23-CR-348-G, which was scheduled to begin on September 23, 2024.

10. In short, the Final PSR and the scheduling of Mrs. Erwin's Sentencing Hearing has come in the middle of counsel's trial preparation for two separate cases.

11. The legal workload required for the preparation of United States v. Back, and the upcoming trial in United States v. Lin has prevented undersigned counsel from having the time required to complete an effective Sentencing Memorandum in the time scheduled by the Court.

12. For example, just this week, in United States v. Lin, counsel has filed a motion for a hearing on coconspirator statements, a response to the government's notice to use 404(b) evidence, a response to government's motion *in limine* seeking to limit cross-examination of a cooperating witness on potential penalties, a motion for change of venue, a response to the government's motion seeking to pre-admit a signed but never entered plea agreement at trial, a motion requesting the government's compliance with expert

disclosures found in Rule 16, and motion striking expert testimony. Undersigned counsel is in the process of drafting a motion *in limine* regarding the government's proposed 404(b) evidence, a response to the government's motion *in limine* regarding mistake of law and jury nullification, and a motion to dismiss.

13. On September 25, 2024, the court in United States v. Lin, set a hearing to hear all pending motions for October 4, 2024. This hearing will require extensive preparation, to include the presentation and cross-examination of witnesses, as there are seven (7) pending motions.

14. Joe E. White, Jr. and Kate C. White also have a conflict on October 7, 2024. Both are scheduled to appear before Judge Timothy King, Muskogee County District Court, in the matter of Ronnie Boswell, et. al. v. Greg Payton, et al., Case No. CJ-2024-242, on Defendant's Motion for temporary Restraining Order, Defendants' Motion to Dismiss Plaintiffs' Claims for Fraud and Conversion, and Defendants' Motion to Consolidate or Transfer. The hearing on Defendants' Motions was scheduled prior to the sentencing hearing in this case being set in this case.

15. Mrs. Erwin deserves a thorough and competent Sentencing Memorandum that is well researched and methodically applies the factors set out in 18 U.S.C. § 3553. Given the time constraints mentioned above, counsel has not had the time required to complete this task.

16. Undersigned counsel is requesting a continuance of the Sentencing Hearing and the corresponding deadline to file a Sentencing Memorandum.

17. Counsel for Mrs. Erwin and government counsel are actively working to identify agreed dates that can be submitted to the Court for consideration. The parties will to provide those dates to the Court's staff in short order.

18. No other continuances of this deadline have been requested.

19. Assistant United States Attorney, Heather Rattan, has been contacted and the government does not oppose this Motion.

CONCLUSION

Based on the facts stated above, Defendant Debra Mercer-Erwin respectfully requests the Court strike the Sentencing Hearing presently scheduled and formally reset the Sentencing Hearing at a date in the near future.

Respectfully submitted,

/s/ W. BRETT BEHENNA
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ATTORNEY FOR DEFENDANT
Debra Mercer-Erwin

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2024, I electronically transmitted the attached document to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing, which will automatically send email notification of such filing to all attorneys of record.

/s/ W. BRETT BEHENNA
W. BRETT BEHENNA

CERTIFICATE OF CONFERENCE

Pursuant to United States District Court for the Eastern District of Texas Local Rule CR-47(a)(3), on September 27, 2024, Defense Counsel for Debra Mercer-Erwin conferred with Assistant United States Attorney Heather Rattan regarding this Motion and can represent to the Court that the United States does not oppose this Motion.

/s/ W. BRETT BEHENNA
W. BRETT BEHENNA